

THE ATTORNEYS GENERAL OF
CONNECTICUT, DELAWARE, MASSACHUSETTS,
MINNESOTA, RHODE ISLAND, AND THE DISTRICT OF COLUMBIA,

April 5, 2021

Merrick Garland
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Garland:

As you transition to your new role as our Nation’s top law enforcement official, we, the Attorneys General for Connecticut, Delaware, Massachusetts, Minnesota, Rhode Island, and the District of Columbia, are writing today to ask you to reverse the positions taken by the U.S. Department of Justice (DOJ) under the prior Administration in certain amicus briefs filed in climate litigation. Those briefs have sought to undermine our efforts to hold fossil fuel companies accountable for harms caused in our states—to our consumers, our investors, our infrastructure, our real property, and our natural resources—through a decades-long deception campaign regarding the dangers that fossil fuels pose to the environment and our climate.¹ In particular, we ask that DOJ withdraw those briefs where it is still possible and, where it is not, to inform the relevant courts that DOJ no longer supports the positions expressed in those briefs. Those positions are not only misplaced—as almost all the courts to consider them have ruled to date—but also directly contravene President Biden’s 2020 pledge to “strategically support ongoing plaintiff-driven climate litigation against polluters.”²

The prior Administration, through DOJ, filed more than a half-dozen amicus briefs supporting the fossil fuel defendants’ positions in our and similar lawsuits, in both federal and state court. For example, on May 5, 2020, DOJ filed an amicus brief in support of the fossil fuel defendants’ motion to dismiss Rhode Island’s claims in *State of Rhode Island v. Chevron Corp.*, No. PC-2018-4716 (R.I. Super. Ct.), where the United States argued, among other things, that Rhode Island’s state law claims are preempted by the federal Clean Air Act, the foreign Commerce Clause, and the foreign affairs power.³ DOJ made those sweeping assertions notwithstanding the fact that Rhode Island’s claims, like the claims many of our states have filed in our own state courts, allege only state law violations based on, among other things, misleading and deceptive conduct in the marketplace. DOJ made similarly sweeping claims in amicus briefs it has filed in support of

¹ Currently pending cases in federal court: *District of Columbia v. Exxon Mobil Corp. et al.*, C.A. 20-1932 (TKJ) (D.D.C.); *State of Connecticut v. Exxon Mobil Corp.*, Case No. 3:20-CV-01555 (JCH) (D. Conn.); *State of Delaware v. BP America, Inc., et al.*, C.A. No. 20-1429-LPS (D. Del.); *State of Minnesota v. Exxon Mobil Corp. et al.*, No. 0:20-cv-01636-IRT-HB. Currently pending cases in state court: *Commonwealth of Massachusetts v. Exxon Mobil Corp.*, No. 1984-CV-03333-BLS1 (Mass. Super. Ct. for Suffolk Cty.); *State of Rhode Island v. Chevron Corp.*, No. PC-2018-4716 (R.I. Super. Ct.); *State of Minnesota v. Exxon Mobil Corp. et al.*, No. 62-CV-20-3837 (Minn. Dist. Ct., Sec. Dist.); *State of Connecticut v. Exxon Mobil Corp.*, No. HHD-CV20-6132568-S (Conn. Super. Ct.)

² Available at: joebiden.com/environmental-justice-plan/

³ See addendum for links to DOJ amicus briefs in selected cases.

April 5, 2021

defendants' removal of the state-court filed actions to federal court. The fossil fuel industry defendants continue to cite those prior amicus briefs in other ongoing proceedings around the country. In *District of Columbia v. Exxon Mobil Corp.*, C.A. No. 20-1932 (TKJ) (D.D.C.), for example, the defendants submitted DOJ's brief in *BP p.l.c. v. Mayor & City Council of Baltimore*, No. 19-1189 (S. Ct.) as supplemental authority for the false proposition that the District of Columbia's state-law consumer protection claims are "federal in nature." We have included a complete list of examples in the addendum to this letter.

For these reasons, we respectfully urge you to review and reverse the positions previously taken by DOJ in the various climate deception lawsuits during the prior Administration. The urgency and importance of DOJ reversing these positions cannot be overstated. DOJ's prior positions are misguided and contravene President Biden's pledge to support lawsuits like the ones our states have filed and Executive Order 13990. Moreover, fossil fuel defendants continue to cite DOJ's prior briefs as if they represent DOJ's current positions. If we or our staff can provide further information, we are available to meet to discuss this matter further.

Very truly yours,



KEITH ELLISON
Minnesota Attorney General



MAURA HEALEY
Massachusetts Attorney General



KATHLEEN JENNINGS
Delaware Attorney General



PETER NERONHA
Rhode Island Attorney General



KARL RACINE
District of Columbia Attorney General



WILLIAM TONG
Connecticut Attorney General

ADDENDUM

Jurisdiction	Case Name	Court	Date
Federal court	<i>BP p.l.c. v. Mayor & City Council of Baltimore</i>	U.S. Supreme Court Case No. 19-1189	November 23, 2020 January 19, 2021 (DOJ amicus brief)
	<i>City of New York v. BP p.l.c.</i>	Second Circuit Case No. 18-2188	March 7, 2019 (DOJ Amicus brief)
	<i>City of Oakland & City and County of San Francisco v. BP p.l.c.</i>	Ninth Circuit Case No. 18-16663	August 3, 2020 (DOJ Amicus brief)
		Ninth Circuit Case No. 18-16663	May 17, 2019 (DOJ Amicus brief)
		District Court Case No. 3:17-cv-06011 and 06012	May 10, 2018 (DOJ Amicus brief)
State court	<i>Mayor & City Council of Baltimore v. BP p.l.c.</i>	Circuit Court for Baltimore City Case No. 24-C-18-004219	March 20, 2020
	<i>State of Rhode Island v. Chevron Corp.</i>	Rhode Island Superior Court Case No. PC-2018-4716	May 5, 2020